

§ 2-111. Scheduling, argument, and submission.

(A) General. Cases are eligible for submission at any time after the appellee's brief has been filed. This rule sets out the methods of scheduling cases for submission, the various submission methods, and rules relating to oral argument.

(B) Methods of Submission on the Merits.

(1)(a) The court may order the submission of any case without oral argument. Cases to be submitted without argument may be submitted at any time after the time for filing the appellant's reply brief has expired. The Supreme Court Clerk will notify counsel both when the order that the case be submitted without argument is entered and at the time the case is actually submitted.

(b) A party may file a motion requesting oral argument upon notice of the court's order that a case is submitted without oral argument. The motion shall be filed within 7 days after the date of the minute entry submitting the case without oral argument and shall state the reasons for the request. The nonmoving party shall have 7 days after the filing of the motion to respond, at which time the motion shall be submitted to the court for consideration. The granting of the motion shall be at the court's discretion.

(2) Cases which are advanced are scheduled for oral argument as soon as the appellee's brief is due to be filed. The following categories of cases will be advanced without motion:

- (a) Criminal cases;
- (b) Workers' compensation cases;
- (c) Unemployment compensation cases;
- (d) Questions certified by other courts;
- (e) Original actions;
- (f) Appeals involving custody of minor children;
- (g) Appeals within original concurrent jurisdiction of the court;
- (h) Cases where a "case stated" has been prepared and filed by the parties;
- (i) Appeals from the Tax Equalization and Review Commission;
- (j) Appeals from the Department of Natural Resources;
- (k) Appeals involving guardianship and/or conservatorship; and
- (l) All juvenile cases, including orders granting or denying juvenile transfers.

(3) In all other cases, either party may file a motion with the court requesting that the case be advanced for argument. A party seeking an advancement of oral argument shall file a showing in support of said motion setting out the reasons said case should be advanced for oral argument. To ensure proper scheduling, attorneys are requested to notify the Supreme Court Clerk by letter if the case should be advanced and advancement is not obvious.

(4) Cases which are not advanced are scheduled in the order in which the briefs of the appellee are filed, not in the order in which the cases were docketed. Nonadvanced cases are scheduled in the argument slots remaining after scheduling advanced cases.

(C) Proposed Call. The proposed call is a list of cases ready for argument and likely to be scheduled for argument during the argument session shown. All advanced cases will be scheduled unless continued, and most nonadvanced cases are scheduled. The proposed call is prepared to allow attorneys to set aside time on their schedules for argument. Cases on the proposed call may not be continued unless leave is granted by the court. A party may file an application for continuance, which must be accompanied by a showing of exceptional cause. See § 2-106 for the form of the application.

(D) Call. The call is the final schedule of oral arguments for a specified session of the court. Cases are heard in the order listed. Cases will not be continued to another session of the court after scheduling on the call unless leave is granted by the court. A party may file an application for continuance, which must be accompanied by a showing of exceptional cause. See § 2-106 for the form of the application.

(E) Oral Argument. The Supreme Court will hear oral argument as scheduled.

(1) Unless otherwise ordered by the court, oral argument shall not exceed 10 minutes per side in any civil or criminal case; provided, however, that where a criminal defendant has been convicted of first or second degree murder and the case at issue is a direct appeal from such conviction, oral argument shall not exceed 20 minutes per side.

(2) On the court's own motion or on application, additional time may be granted. An application, in the form prescribed by § 2-106, must be filed within 10 days after the proposed call is mailed. Such application must be accompanied by a showing of good cause.

(3) The court may further limit oral argument in any case. In such event, the Clerk of the Supreme Court shall notify the parties of the time limit at the time the order is entered.

(4) No party will be permitted oral argument unless he or she has a brief on file. An amicus curiae may, with the consent of a party, request leave to present oral argument on the side of that party within the time allowed to that party for argument.

(5) Except where the penalty prescribed by law is life imprisonment or death, no oral argument is allowed in any criminal case:

(a) Where the accused entered a plea of guilty or no contest; or

(b) Where the sole allegation of error is that the sentence imposed was excessive or excessively lenient or the trial court refused to reduce the sentence upon application of the defendant.

(c) Where the penalty prescribed by law is life imprisonment or death, and § 2-111(E)(5)(a) and/or (b) applies, oral argument shall not exceed 10 minutes per side unless otherwise ordered by the court.

(6) Unless otherwise directed by the court, the parties may elect to waive oral argument and submit a case solely on the briefs.

(F) Court of Appeals Oral Argument. Except in exigent circumstances, the Court of Appeals will hear oral arguments in panels of three judges, as scheduled, in the Court of Appeals courtroom located in the State Capitol Building, or at other locations throughout the state as designated by the Chief Judge. Whenever any member of a panel is not able to be present at the scheduled oral argument of a case, the case shall be deemed submitted to that member on the record and briefs. If a member of a panel is unable for any reason to participate after the case is submitted for decision, the Chief Judge shall appoint a substitute judge from the Court of Appeals or, at the request of the Chief Judge, the Chief Justice may call an active or retired district court judge to serve as a substitute judge, and the case shall be deemed submitted to the new member on the record and briefs. The rules relating to oral argument shall be the same as provided in § 2-111(E), except as may be modified by the Court of Appeals.

(G) Bankruptcy. In a pending civil action before the Supreme Court, involving a party named as a debtor in a bankruptcy petition:

(1) The party named as such debtor in bankruptcy, or any other party to the pending civil action having knowledge of bankruptcy proceedings involving another party to the action pending before the Supreme Court, shall, as soon as reasonably possible, notify the Supreme Court Clerk concerning the proceedings in bankruptcy. The Supreme Court Clerk will attempt to confirm the existence of such bankruptcy proceedings. On confirmed existence of such bankruptcy proceedings, the proceedings in the Supreme Court involving such named debtor in bankruptcy shall be suspended immediately. The Supreme Court Clerk shall notify the parties that the action has been suspended. An action so suspended shall be removed from the active docket of the Supreme Court and shall remain suspended until order of the Supreme Court restoring the action to the active docket of the court. If the Supreme Court Clerk is unable to confirm existence of the alleged proceeding in bankruptcy, the parties shall be so informed, and compliance with § 2-111(G)(2) is then required.

(2) If the Supreme Court Clerk is unable to confirm the existence of a bankruptcy proceeding, as provided in § 2-111(G)(1), the party named as a debtor in a bankruptcy petition, or any party to the action having knowledge of the bankruptcy proceedings involving another party to an action pending before the Supreme Court, shall file with the Supreme Court Clerk a suggestion of bankruptcy and either a certified copy of the bankruptcy petition or a copy of the caption sheet of the bankruptcy petition showing the case number, the names of the parties, and the filing stamp affixed by the clerk of the bankruptcy court.

(3) An action before the Supreme Court which involves a party as a named debtor in a bankruptcy petition shall remain suspended as the result of the automatic stay imposed by 11 U.S.C. § 362 (1982) until some party shows that relief from the automatic stay has been granted. A showing regarding relief from the automatic stay shall include a detailed order, signed by the bankruptcy judge, which shall outline the relief granted by the bankruptcy court and shall state that the action, involving a subject matter otherwise within the jurisdiction of

the bankruptcy court, may be prosecuted in the courts of the State of Nebraska. Such showing in the Supreme Court shall be made by motion under § 2-106.

(4) If a debtor in bankruptcy is a party to a proposed compromise involving an appeal in the Supreme Court, any party to such compromise shall provide the Supreme Court with a certified copy of the bankruptcy judge's approval of the compromise, which order of approval shall state that the procedures of Fed. Bankr. R. 2002(a)(3) have been satisfied. After proof of such approval by the bankruptcy court, the Supreme Court may take appropriate action regarding the matter which is the subject of the compromise involving the debtor in bankruptcy as a party to an action pending in the Supreme Court.

Rule 11(E) and (F) amended May 28, 1992; Rule 11(F) amended March 31, 1999; Rule 11(B)(2)(i) amended May 17, 2000; Rule 11(B)(2) and (3), (E)(1), (5), and (5)(a) amended March 16, 2005; Rule 11(E)(5)(c) adopted March 16, 2005; Rule 11(B)(2)(j) amended November 22, 2006. Renumbered and codified as § 2-111, effective July 18, 2008; § 2-111(B)(1) amended November 19, 2008; § 2-111(B)(1) amended March 26, 2014; § 2-111(B)(2) amended October 22, 2014; § 2-111(B)(2) amended August 4, 2017, effective August 24, 2017.
